IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 16957 of 2007(R)

PETITIONERs:

1. **R.VIJAYACHANDRAN, PRESIDENT, KOLLAM MOTOR TRANSPORT AND AUTOMOBILES ENGINEERING WORKERS CO-OPERATIVE SICIETY LTD.NO.Q.1199, KOLLAM-691001.**

2. **KOLLAM MOTOR TRANSPORT AND AUTOMOBILES ENGINEERING WORKERS CO-OPERATIVE SOCIETY LTD., NO.Q.1199, KOLLAM, REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

1. **THE STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT, THIRUVANANTHAPURAM.**

2. **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL), KOLLAM.**

3. **THE REGISTRAR OF CO-OPERATIVE SOCIETITIES, THIRUVANANTHAPURAM.**

4. **THE ADDITIONAL REGISTRAR(CONSUMER), OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.**

ADDL. R5 IS IMPLEADED

5. **V.SASIDHARAN NAIR, A&E II INSPECTOR, ASSISTANT REGISTRAR (GENERAL'S) OFFICE KOLLAM. IMPLEADED AS ADDL. R5 VIDE ORDER DT. 4.12.07.**

BY ADV. SRI.R.SUDHIR
SMT.A.G.ANEETHA-SPL.GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2007, ALONG WITH WPC NO. 17586 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.16957/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 16.11.04 NO.H.M. 846/2004.

EXT.P2:- COPY OF THE PROCEEDINGS OF RETURNING OFFICER DT. 12.1.05.

EXT.P3:- COPY OF THE NOTICE DT. 28.10.06 NO. H.M.4789/06 FROM THE 2ND RESPONDENT TO THE PETITIONERS.

EXT.P4:- COPY OF THE COMMON JUDGMENT IN WP(C) NOS. 29928 & 3000/06 DT. 28.2.07 BEFORE THE HONOURABLE HIGH COURT OF KERALA.

EXT.P5:- COPY OF THE COMMON JUDGMENT IN WA. NOS. 858 & 859 OF 2007 DT. 30.3.07 BEFORE THE HONOURABLE HIGH COURT OF KERALA.

EXT.P6:- COPY OF THE JUDGMENT IN WPC. 15593/07 DT. 28.5.07 BEFORE THE HONOURABLE HIGH COURT OF KERALA.

EXT.P7:- COPY OF THE STATEMENT FILED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT NO.MT(3)17562/07 DT. 1.6.07.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).Nos.16957 & 17586 OF 2007

Dated this the 18th day of December, 2007

JUDGMENT

These writ petitions relate to a co-operative society, the committee of which has been superseded. In the latter among the captioned cases, the supersession is under challenge.

2. The ground of supersession is that the new committee failed to enter upon office on the date on which the term of office of the existing committee expired. Though that is the provision of law invoked with reference to Section 33 (1) (b) of the Kerala Co-operative Societies Act, 1969, hereinafter, the 'Act', for short, the fact remains that the basic case of the official respondents is that the so called election, on the basis of which the committee has claimed to be entitled to be in office, was itself a fraud mechanisation of some of the private individuals and the departmental official, who figured as the Returning Officer.

3. Going by the materials on record, 22 months have passed after the committee took over the office, following the election

in question. The official, who was the Returning Officer by the records of the society, has filed an affidavit asserting that he conducted the election and results were declared by him. That is the moot issue, on which, the other official respondents would not concur. It is also stated that certain vigilance enquiries are going on in that regard.

4. As already noticed, the second limb of clause (b) of Sub-section 1 of Section 33 of the Act deals with a situation where “a new committee failed to enter upon office”. This pre-supposes that a new committee has been elected. That conclusion is irresistible, because, Section 28 provides for an election and an advertence to Rule 35 of the Kerala Co-operative Societies Rules, 1969, hereinafter, the 'Rules', for short, would show that the election process gets concluded by the declaration of election. Rule 35 (3) (r) and (s) would show that the Returning Officer, after intimating the time and place at which the counting are commenced, is duty bound to ensure that the votes are counted by him or under his supervision and the number of votes secured by each candidates and the results of the election are announced

by him as soon as the counting is over. The result of the election shall also be recorded in the minutes book of the society and attested by the Returning Officer and it shall also be notified immediately on the notice board of the society. The minutes book of the society contains such entry. It is attested by the Returning Officer. Therefore, by the operation of the relevant rules and provisions of the Act, the election is beyond challenge at least in so far as it authorises the new elected committee to assume office. Of course, fraud vitiates even the most solemn among all acts. But, a case of fraud is not to be easily assumed or presumed to lead to ouster of a committee in office of a society.

5. Having perused the materials on record and the Rules, I am satisfied that the committee, which has its term as of now till 12.1.2008, is entitled to continue and the supersession order has to go. However, that shall be without prejudice to the right of the department to proceed with the vigilance enquiry and also proceedings on the basis of the allegation of fraud between the official who figured as the Returning Officer and the members of

the committee. Disciplinary proceedings, if any, initiated against the official concerned can also continue. However, it is clarified that all such proceedings shall be decided without reference to anything stated in this judgment. It is also clarified that this judgment is rendered having regard to the effect of the relevant provisions of the Act and Rules and does not go into any controversial question regarding the allegation of fraud or otherwise.

In the result, these writ petitions are allowed, quashing the impugned order in the second among the writ petitions to the extent stated above and the supersession of the committee of the society is set aside and the committee that is shown to have entered office on 12.1.2005 shall be entitled to continue for its term as per the provisions of the Act and Rules.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.